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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964 5

NO. [redacted] 123

JONES & LAUGHLIN STEEL CORPORATION,
Petitioner,

v.

GRIDIRON STEEL COMPANY,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

NO. .....

JONES & LAUGHLIN STEEL CORPORATION,
Petitioner,

v.

GRIDIRON STEEL COMPANY,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Petitioner prays that a writ of certiorari issue to review an order of the United States Court of Appeals for the Sixth Circuit, entered in the above-entitled case on December 11, 1964, dismissing petitioner's appeal to that court; petition for reconsideration denied February 11, 1965.

CITATIONS TO THE OPINIONS BELOW

The order of the court of appeals is not reported. It appears in the appendix to this petition, *infra*, p. 10 No separate opinion was filed by the court of appeals. The order of the court of appeals denying reconsideration appears in the appendix to this petition, *infra*, p. 11.

The judgment of the district court appears in the appendix to this petition, *infra*, p. ... The district court entered memorandum findings of fact and conclusions of law. They are reported only at 142 United States Patents Quarterly 264.

JURISDICTION

The order dismissing petitioner's appeal, review of which is sought by this petition, was entered by the court of appeals on December 11, 1964. Reconsideration was denied on February 11, 1965. Jurisdiction of this court is invoked under 28 U.S.C. §1254(1). Cases believed to support the jurisdiction are:

Leishman v. Associated Electric Co., (1943) 318 U.S. 203; and

Department of Banking v. Pink, (1942) 317 U.S. 264.

QUESTIONS PRESENTED

(1) Under Civil Rule 6(a), as amended effective July 1, 1963, is a notice of appeal filed "within the time fixed by law" when the thirtieth calendar day following entry of the judgment appealed from falls on a Saturday and the notice is filed on the following Monday?

(2) If the thirtieth calendar day following the entry of a judgment in a civil action falls on a Saturday, is the amendment of Civil Rule 6(a), making that Saturday *dies non* in computing the appeal time, a nullity if the office of the clerk of the district court is open for business on that Saturday?

STATUTE INVOLVED

28 U.S.C. 2107. TIME FOR APPEAL TO COURT OF APPEALS.

"Except as otherwise provided in this section, no appeal shall bring any judgment, order or decree in an action, suit or proceeding of a civil nature before a court of appeals for review unless notice of appeal is filed, within thirty days after the entry of such judgment, order or decree."

* * * * * * *

RULES OF CIVIL PROCEDURE INVOLVED*

CIVIL RULE 6. TIME.

"(a) Computation. In computing any period of time prescribed or allowed by these rules, *by the local rules of any district court,* by order of court, or by any applicable statute, the day of the act, event, or default [after] *from* which the designated period of time begins to run [is] *shall* not [to] be included. The last day of the period so computed [is to] *shall* be included, unless it is a *Saturday,* a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is [neither] *not a Saturday,* a Sunday, [nor] *or* a *legal* holiday. * * *." [374 U.S. 878; 308 U.S. 669]

*Matter deleted by the 1963 amendment to the Rules is shown in brackets and matter added by the amendment is shown in italics.

Rules of Civil Procedure Involved.

CIVIL RULE 73. APPEAL TO A COURT OF APPEALS.

"(a) WHEN AND HOW TAKEN. When an appeal is permitted by law from a district court to a court of appeals the time within which an appeal may be taken shall be 30 days from the entry of the judgment appealed from * * *.

"A party may appeal from a judgment by filing with the district court a notice of appeal. * * *" [335 U.S. 933-4]

CIVIL RULE 77. DISTRICT COURTS AND CLERKS.

"(c) CLERK'S OFFICE AND ORDERS BY CLERK. The clerk's office with the clerk or a deputy in attendance shall be open during business hours on all days except *Saturdays,* Sundays, and legal holidays[.], *but a district court may provide by local rule or order that its clerk's office shall be open for specified hours on Saturdays or particular legal holidays other than New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, and Christmas Day.* * * *." [374 U.S. 890; 308 U.S. 758].

STATEMENT OF THE CASE

This is a civil action which the respondent, plaintiff below, brought to recover damages for an alleged breach of a patent license agreement. Jurisdiction of the district court was founded upon diversity of citizenship between the parties. Petitioner denied any breach of the license or any liability, and the case was tried on the merits by the district court sitting without a jury. The district court entered a judgment, *infra*, p. 11, on Thursday, July 2, 1964, granting in part and denying in part the relief prayed for.

Both parties appealed. Respondent filed its notice of appeal on Saturday, August 1, 1964, the thirtieth calendar day following entry of the judgment. Petitioner, relying upon the literal provision of Civil Rule 6(a) filed its appeal on the following Monday, August 3.

Respondent moved to dismiss petitioner's appeal. The court of appeals granted the motion, holding that petitioner's appeal had not been filed "within the time fixed by law"; *infra*, pp. 10-11. A petition for reconsideration was denied on February 11, 1965, *infra*, p. 11.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

(1) This case involves a question as to the timeliness of taking appeals under the Federal Rules of Civil Procedure, which has not been but should be decided by this Court. This Court has taken jurisdiction of numerous cases raising the same or like questions prior to the 1963 amendment to the rules. Such cases include:

Union National Bank v. Lamb, (1949) 337 U.S. 38;

Leishman v. Associated Electric Co., supra;

Thompson v. I.N.S., (1964) 357 U.S. 384;

United States v. Schaefer Brewing Co., (1958) 356 U.S. 227; and

Pyramid Motor Co. v. Ispass, (1947) 330 U.S. 695.

The effect of the 1963 amendment has not been passed upon by this court, nor, so far as counsel for petitioner have been able to ascertain, has it been petitioned to do so. The same considerations that moved the Court to review the above-cited cases are present here.

(2) The questions raised herein are of public importance and extend far beyond the interests of the litigants to this action. They may arise in any private civil action in which a judgment is entered on a Thursday, (i.e., in one case out of five), since the thirtieth calendar day following entry of the judgment will fall upon a Saturday.

(3) The decision below is contrary to the intended purpose of the 1963 amendment to Rule 6(a) stated by the Advisory Committee on Rules, and its *ratio decidendi*

is believed by petitioner to be in conflict with apposite decisions of this court and other lower Federal courts.

Even prior to the 1963 amendment, Civil Rule 6(a) specifically excluded certain days in computing the last day of "30 days from the entry of the judgment" allowed by 28 U.S.C. 2107 and Civil Rule 73(a) for the taking of an appeal:

Union National Bank v. Lamb, supra;

Columbia Lumber Co. v. Agostino, (C. A. 9, 1950) 184 F.2d 731, 733;

Wilson v. Southern Ry. Co., (C.A. 5, 1945) 147 F.2d 165, 166; and

Prudential Oil & Minerals Co. v. Hamlin, (C.A. 10, 1958) 261 F.2d 626.

The 1963 amendment added Saturdays to the list of excluded days without any exception or qualification whatsoever; in submitting the 1963 amendments to this court, the Advisory Committee on Rules stated, 28 U.S.C.A. Rule 6, Pocket Part, p. 50:

> "Saturday is to be treated in the same way as Sunday or a 'legal holiday' in that it is not to be included when it falls on the last day of the computed period * * *."

The lower court, however, refused (*infra,* p. 10) to treat Saturdays the same as Sundays or legal holidays, basing its conclusion on the facts (i) that by the 1963 amendment Civil Rule 77(c) was amended to permit a district court to provide by local rule that its clerk's office shall be open on Saturdays and certain

legal holidays, (ii) that Criminal Rule 56 does not treat Saturdays as *dies non,* and (iii) that the clerk's office in the Northern District of Ohio, in which office the notice of appeal herein was filed, had been open on August 1, 1964. It cited its own order filed July 16, 1963, *infra,* p. 12.

Criminal Rule 5(b) is plainly irrelevant. The essential question here is whether this court, by its concurrent promulgation of the "Saturday" *exclusion* and the "local rules of any district court" *inclusion* in Civil Rule 6(a), intended (i) to authorize the lower courts, by local rule, to alter, locally, the substantive provisions of Civil Rule 6(a), or whether (ii) it intended only to add another category of specific situations to which the substantive provisions of the rule would apply. The lower court has ruled in favor of the first alternative, in seeming disregard of Civil Rule 83.

CONCLUSION

The issues raised are real and substantial ones in the interpretation and application of the Federal Rules of Civil Procedure. They are of public importance and meet this court's criteria for the granting of this petition.

Respectfully submitted,

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May 10, 1965

APPENDIX

Orders of the Court of Appeals

(Caption Omitted)

Filed: December 11, 1964

This cause is before this Court on motion of plaintiff-appellee for an order dismissing the appeal of the defendant-appellant herein for the reason that the notice of appeal was not filed within the time fixed by law. (Section 2107, Title 28, U.S.C.)

The notice of appeal in question was filed on Monday, August 3, 1964, the 32nd day after the entry of the judgment from which appeal is taken. The question arises whether it should have been filed on Saturday, August 1st, which was the 30th day after judgment. Rule 56 of the Federal Rules of Criminal Procedure provides, "The clerk's office with the clerk or a deputy in attendance shall be open during business hours on all days except Sundays and legal holidays." Subsequent to the amendment of Rule 77(c) of the Federal Rules of Civil Procedure, effective July 1, 1963, this Court issued an order to all clerks of District Courts in the Sixth Circuit providing "(T)hat the clerks' offices be open for business on Saturday mornings until such time as the proposed amendment to Rule 56 of the Federal Rules of Criminal Procedure becomes effective, * * *"

Upon consideration of the foregoing, the clerk's office being open on Saturday, the Court finds that the notice of appeal of the defendant-appellant was not filed

within the time fixed by law and it is therefore ordered that the appeal be and the same is hereby dismissed.

Filed: February 11, 1965

This cause is before the Court on motion of Jones & Laughlin Steel Corporation, defendant-appellant, for reconsideration of the order of this Court of December 11, 1964, dismissing the cross-appeal herein.

Upon consideration of said motion, the Court finds that it is not well taken and it is hereby ordered that said motion be and the same is denied.

Judgment of the District Court

Filed: July 2, 1964

This cause having come on for trial before the court and, upon consideration, the court finds for the plaintiff.

IT IS, THEREFORE, ORDERED that the plaintiff recover from the defendant the total amount of Twelve Thousand Two Hundred Eighty-Nine Dollars and Ninety-Five Cents (12,289.95) and costs herein.

Order of the Court of Appeals for the Sixth Circuit

Filed: July 16, 1963

In the Matter of the Opening of Clerks' offices on Saturday.	ORDER

The matter of the opening of the Clerks' offices on Saturdays having come before the Court and the Judicial Council of the Sixth Circuit and,

It appearing to the Court that Rule 77(c) of the Federal Rules of Civil Procedure has been amended, effective July 1, 1963, to read in part as follows: "The clerk's office with the clerk or a deputy in attendance shall be open during business hours on all days except Saturdays, Sundays, and legal holidays, but a district court may provide by local rule or order that its clerk's office shall be open for specified hours on Saturdays or particular legal holidays other than New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, and Christmas Day." And,

It further appearing to the Court that Rule 56 of the Federal Rules of Criminal Procedure reads in part as follows: "The clerk's office with the clerk or a deputy in attendance shall be open during business hours on all days except Sundays and legal holidays." And a proposed amendment to said rule, by which the clerks'

offices are not required to be open on Saturday has not yet become effective,

It is hereby ordered by said Court and Council that the clerks' offices be open for business on Saturday mornings until such time as the said proposed amendment to Rule 56 of the Federal Rules of Criminal Procedure becomes effective, and

It is further ordered that the Clerk of this Court send a copy of this order to the Chief Judges of all the District Courts in the Sixth Circuit and to all of the clerks and deputy clerks in charge of clerks' offices in said circuit.

Office-Supreme Court, U.S.
FILED
JUN 9 1965
JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 1146. 123

JONES & LAUGHLIN STEEL CORPORATION,

Petitioner,

v.

GRIDIRON STEEL COMPANY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

BRIEF FOR RESPONDENT IN OPPOSITION.

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In the Supreme Court of the United States

OCTOBER TERM, 1964.

No. 1146.

JONES & LAUGHLIN STEEL CORPORATION,
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v.

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Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

BRIEF FOR RESPONDENT IN OPPOSITION.

OPINIONS BELOW.

Reference to the opinions below appears on pages 1 and 2 of the Petition.

JURISDICTION.

The jurisdictional basis is set forth in the Petition.

QUESTION PRESENTED.

Whether a notice of appeal filed by petitioner on the 32nd day after judgment is timely under 28 U. S. C. 2107 when the 30th or last day fell on a Saturday, a day on which the Federal courthouse was open for the transaction of all business by order of the Sixth Circuit Court of Appeals pursuant to Civil Rule 77(c) and a day on which respondent filed its notice of appeal and on which petitioner could have filed its notice.

STATUTE AND RULES OF CIVIL PROCEDURE INVOLVED.

The pertinent portions of 28 U. S. C. 2107 and Civil Rules 73(a) and 77(c) appear in the Petition at pp. 3 and 4. A pertinent portion of Civil Rule 6(a) was omitted by petitioner and Civil Rule 6(b) is also pertinent. They are here set forth:

"Civil Rule 6. TIME

(a) *Computation.* * * * *As used in this rule and in Rule 77(c),* "legal holiday includes New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Christmas Day, *and any other day appointed as a holiday by the President or the Congress of the United States, or by the state in which the district court is held.* (Emphasis ours.)

(b) *Enlargement.* When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; *but it may not extend the time for taking any action under Rules* 50(b), 52(b), 59(b), (d) and (e), 60(b), and *73(a)* and (g), except to the extent and under the conditions stated in them." (Emphasis ours.)

STATEMENT OF THE CASE.

On July 2, 1964, the District Court for the Northern District of Ohio, Eastern Division, entered a final judgment in favor of respondent (plaintiff below) in the amount of $12,289.95. On the 30th day, or on Saturday, August 1, 1964, respondent filed a notice of appeal, appealing only as to the amount of damages allowed and the disallowance of interest thereon, said appeal being docketed in the Court of Appeals for the Sixth Circuit as appeal No. 16,125.

On the same day, August 1, 1964, the clerk of the District Court mailed (as required by Civil Rule 73(b)) copies of respondent's notice of appeal to counsel for petitioner (defendant below), which should have been received by them on Monday, August 3, 1964. On the same day, August 3, 1964, or the 32nd day after the entry of the judgment, petitioner filed a notice of appeal, which was docketed as appeal No. 16,126.

The last day on which either party could file a notice of appeal in this case was the 30th day, or August 1, 1964. Respondent filed its appeal on that day in the Federal Court House at Cleveland, which was open for business, and if petitioner wished to appeal it likewise had to file its notice on or before the last day, or August 1, 1964. The statutes says so, U. S. C. Title 28 § 2107 providing in the first paragraph:

> "Except as otherwise provided in this section, no appeal shall bring any judgment, order or decree in any action, suit or proceeding of a civil nature before a court of appeals for review *unless notice of appeal is filed, within thirty days after the entry of such judgment, order, or decree.*" (Emphasis ours.)

On December 11, 1964, the Court of Appeals granted respondent's motion for an order dismissing the appeal of

petitioner for the stated reason that "the clerk's office being open on Saturday, the Court finds that the notice of appeal of the defendant-appellant [petitioner] was not filed within the time fixed by law"; and on February 11, 1965, the Court of Appeals denied petitioner's motion for reconsideration (App. pp. 10 and 11 of Petition).

REASONS RELIED ON FOR DENIAL OF THE WRIT.

1. There is no Conflict of Decision.

Both petitioner and respondent are in agreement that there is no conflict among the various circuits which requires resolution by this Court.

2. There is no Question of Public Importance.

Petitioner acknowledges that its counsel have been unable to find a single instance in any circuit where a court has been called on to decide the issue here presented. It is thus readily apparent that the asserted one case out of five alleged by petitioner to raise this issue (Petition, p. 6), as a practical matter, does not raise it.

Even more importantly, the July 16, 1963 order of the Sixth Circuit Court of Appeals (App. pp. 12-13 of Petition) has established pursuant to Civil Rule 77(c) the local rule for the district courts in that circuit as regards the status of the clerk's office on Saturday. The effect of that order on the computation of time for filing an appeal in the Sixth Circuit, if the effect was ever in doubt, has been clearly stated in the lower court's opinion and order in this case (App. p. 10 of Petition). Thus, any case decided in the Sixth Circuit on a Thursday must be appealed by the 30th day, a Saturday, as provided in 28 U. S. C. 2107 unless that day is one on which the clerk's office is closed due to its being a legal holiday. A decision by the United

States Supreme Court is hardly required to establish a local rule for the Sixth Circuit. Moreover, circuits other than the Sixth can have little interest in a case such as is here presented since each circuit, and also each District Court, under Civil Rule 77(c), is given discretion to establish its own local rule with respect to the status of the clerk's office on Saturdays.

In any event, the question here presented will soon disappear when pending amendments of Criminal Rule 56 are adopted by this Court to permit the closing of the clerk's office on Saturdays as to criminal cases. It was this conflict between unamended Criminal Rule 56 and amended Civil Rule 77 as to Saturdays that prompted the Court of Appeals for the Sixth Circuit to promulgate its order of July 16, 1963 (App. pp. 12 and 13 of Petition) keeping the district clerk's office open on Saturday mornings for all business since they were required to be open anyway for criminal matters.

3. The Decision of the Court of Appeals is Clearly Correct.

Respondent filed its Notice of Appeal on the 30th day after judgment, August 1, 1964, which day fell on a Saturday. The District Court in Cleveland was open for the transaction of all business on that Saturday morning as it had been since it originally opened in the 19th Century, unless it was a legal holiday. This practice in the Northern District of Ohio was, or should have been, well known to petitioner's counsel. Nevertheless, petitioner asserts it "relied" on the literal reading of Rule 6(a) (Petition, p. 5). There is nothing in the record which suggests anything of the sort. In fact, the chronology of events clearly indicates that petitioner belatedly filed its appeal after it had discovered that respondent had appealed and only now relies on an interpretation of the civil rules in an attempt to

extend 28 U. S. C. 2107 to permit the filing of a notice of appeal on the 32nd day after judgment. Counsel are obliged to know and are bound by all applicable rules of court including the local rule established by the order of the Sixth Circuit Court of Appeals on July 16, 1963.

Petitioner's position is clearly incorrect. The statute 28 U. S. C. 2107 has never, so far as counsel can determine, been interpreted in a manner whereby the 30th day did not count when that day was a business day and the clerk's office was open; nor has Civil Rule 73(a) ever been so interpreted. Indeed, prior to the 1963 amendment of Rule 6(a), courts counted Saturdays whether the clerk's office was open or not.

Thus, in *Casalduc vs. Diaz*, 117 F. 2d 915, *cert. denied*, 314 U. S. 639 (1941), the First Circuit held that where the last day for filing an appeal fell on a Saturday, and the clerk's office was closed Saturday afternoon pursuant to a court rule, a notice of appeal which was slipped under the clerk's door during the afternoon was not timely because it should have been filed Saturday morning. *Id.* at 916.

In *Muse vs. Freeman*, 197 F. Supp. 67 (E. D. Va. 1961) the court held that where deputy clerks were available to receive papers on Saturday, the time for filing a complaint was not extended to the following Monday despite a court rule which authorized the clerk's office to close on Saturday. In other words the district court held that even though the court was officially closed on Saturday, it made no difference if the court was in fact open for the purpose of filing papers. Furthermore, in the instant case the District Court of Cleveland was open pursuant to the authorization of Civil Rule 77(c) and the specific order of the Court of Appeals.

It follows that an appeal in this case is likewise limited to thirty days by the present statute 28 U. S. C. § 2107 and Civil Rule 73(a). It is mandatory and jurisdictional and is unaffected by Civil Rule 6(a). This is made clear by Civil Rule 6(b) (p. 2 of this Brief) which provides that the time for filing an appeal under Civil Rule 73(a) cannot be extended by any action of the court.

In *Shotkin v. Welsler*, 254 F. 2d 596, 5th Cir., *cert. denied*, 358 U. S. 855 (1958), it was held:

> "When the time for appeal has elapsed, this Court has no jurisdiction of the case and none can be conferred by further action of the District Court. *Waddell v. Chicago Land Clearance Commission*, 7 Cir., 206 F. 2d 748. The appeal must therefore be dismissed." *Id.* at 597.

At page 7 petitioner claims that, "The 1963 amendment added Saturdays to the list of excluded days without any exception or qualification whatsoever * * *." It is true that Civil Rule 6(a) adds Saturdays to the list of excluded days, but not without exception or qualification, which is supplied by Civil Rule 77(c) permitting the adoption of a local rule authorizing district courts to be open for business on Saturdays and on particular legal holidays other than the eight named ones.

The 1963 amendment to Rule 6(a) to add the word "Saturday" obviously was not intended to be effective where the District Court involved was regularly open for the transaction of business on a Saturday. This is demonstrated by the fact that when Rule 6(a) was amended, Rule 77(c) was also amended to provide "* * * but a district court may provide by local rule or order that its clerk's office shall be open for specified hours on Saturdays." These two rules, Rules 6(a) and 77(c), must be read in *pari materia*. This is apparent from the Advisory

Committee note to Rule 6(a) which states, "This amendment is related to the amendment of Rule 77(c) changing the regulation of the days on which the clerk's office shall be open." (28 U. S. C. A. Rule 6, Supp. 1965.) This statement precedes the portion of the Advisory Committee on Rules' statement set forth in the Petition at page 7. These two rules also clearly demonstrate that uniformity in all of the district courts as to Saturdays and particular legal holidays, other than the eight named holidays, is not contemplated as impliedly claimed by petitioner.

In other words, Saturdays are treated as *dies non* by amended Civil Rule 6(a) only in the absence of a local rule or order under amended Civil Rule 77(c) that the Clerk's office shall be open for specified hours on Saturdays. Since such a local rule was established by order of the Sixth Circuit Court of Appeals, it follows that Saturdays are not excluded in computing the time for filing an appeal in that Circuit.

We submit that the decisive test as to appeals is—could the notice of appeal be filed within the 30-day period limited by 28 U. S. C. 2107 and Civil Rule 73(a)? If it could, as in the instant case, then it must be, even though the 30th day is a Saturday.

CONCLUSION.

We can perceive of no reason why this Court should grant certiorari in view of the limited scope and interest of this case and the July 16, 1963 order of the Court of Appeals for the Sixth Circuit requiring all District Courts in the Circuit to be open for business on Saturday mornings in accordance with Rule 77(c).

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SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
JUN 15 1965
JOHN F. DAVIS, CLERK

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On Petition For Writ Of Certiorari To The
United States Court Of Appeals
For The Sixth Circuit

REPLY BRIEF FOR PETITIONER

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June 15, 1965

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GRIDIRON STEEL COMPANY,
Respondent.

On Petition For Writ Of Certiorari To The
United States Court Of Appeals
For The Sixth Circuit

REPLY BRIEF FOR PETITIONER

—I—

The "Questions Presented" are of substantial public importance and should be answered by this Court.

Whether stated in the terms of petitioner's "Questions Presented" or in terms of respondent's counter-question, it is self-evident that the questions raised herein go to the proper construction and interpretation of rules promulgated by this Court governing civil appeals in all the courts of the United States and hence are of broad and general importance.*

*Contrary to respondent's contention (Br. p. 2) Civil Rule 6(b) has no pertinency to this case. The district court was not asked to extend the time for taking any action under the civil rules, and it did not purport to do so.

Respondent's suggestion, that the decision below is applicable only to judgments entered on Thursdays in the Sixth Circuit, is specious. But even if the suggestion were sound (which petitioner denies), it still remains true that a decision applicable to 20% of the cases in only one judicial circuit has a public importance beyond the interests of the parties here.

The cases cited by respondent do not support its contention that the questions presented are of interest solely to the litigants herein. To the contrary, they show that over the years there has been continuing dispute and confusion over discrepencies between the business hours kept by court clerks and the business hours mandated by the civil rules. The new facet of the problem, raised by the 1963 amendment of the civil rules and the decision below, should be settled by this Court, as like facets have been earlier decided.

—II—

Respondent does not attempt to answer the "Questions Presented" — it begs them.

Respondent bases its opposition on two mutually inconsistent grounds: (1) that 28 U.S.C. § 2107 and Civil Rule 73(a) are "mandatory and jurisdictional" and computation of appeal time is unaffected by Civil Rule 6(a)*; and (2) that the computation of appeal time *is* subject to Civil Rule 6(a) but that each judicial circuit may alter the effect of Rule 6 by a local rule.

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*The contention is contrary to the result reached in *Union National Bank v. Lamb,* (1949) 337 U.S. 38, 40-1.

Respondent's first alternative is in direct conflict with the cases cited at page 7 of the petition. If that contention is the correct one, there is a conflict between the decision below and decisions by the courts of appeals of the Fifth, Ninth and Tenth Circuits. Such a conflict should be resolved by this Court.

Respondent's second alternative would leave the computation of time subject to variation by local rule. Thus each circuit (or district) might establish its own practice for the computation of time. Such a result is believed by petitioner to be contrary to the intended purpose of Civil Rule 1 which provides that the civil rules "govern the procedure * * * in *all* suits of a civil nature" (emphasis supplied). If the civil rules are to have different meaning or application in the various circuits (or districts) that fact should be set forth authoritatively by this Court.

Respectfully submitted,

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June 15, 1965